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10/056,418	01/22/2002	Todd Campbell	P895 US	8065

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MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3734

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/056,418
Filing Date: January 22, 2002
Appellant(s): CAMPBELL, TODD

MAILED

OCT 19 2007

Group 3700

CAMPBELL, TODD
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 11, 2007 appealing from the Office action mailed January 25, 2007.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interference which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed

The appellant's statement of the issues in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US2001/0020181	Layne	09-2001
6,096,070	Ragheb	08-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 34,38 and 42 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Layne (US 2001/0020181) in view of Ragheb et al (6,096,070).

Layne discloses in figure 3, a stent assembly having the limitations as recited in the above listed claims, including: a stent 30, a plurality of bands 52 circumferentially wrapped around the stent, where the plurality of bands include at least first and second band (see fig. 3), where the bands elastically can grip the stent. However, Layne is silent regarding the bands contain different therapeutic agents.

Ragheb teaches the stent has different therapeutic agents (see col. 3, lines 40-50 and col. 4, lines 42-65)

It would have been obvious to one having ordinary skill in the art at the same time the invention was made to modify Layne by making the bands contain different therapeutic agents as taught by Ragheb in order to facilitate different treatment of using different therapeutic agents at the stent site.

As to claims 35-36, Layne discloses the invention substantially as claimed. Layne is silent regarding the bands are made of different polymers and the bands have two layers. Ragheb teaches the stent has different polymers and the bands have two layers (see col.7, lines 15-30, fig. 3).

It would have been obvious to one having ordinary skill in the art at the same time the invention was made to modify Layne by making the bands contain different polymers and the bands have two layers as taught by Ragheb in order to facilitate of different therapies at the stent site.

(10) Response to Argument

Claims 34-36,38 and 42

Applicant argues that there is no suggestion to combine the references. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one having ordinary skill in the art at the same time the invention was made to modify Layne by making the bands contain different polymers and the bands have two layers as taught by Ragheb in order to facilitate of different therapies at the stent site.

Applicant argues, "the Layne and the Ragheb patent, alone or in combination, fail to teach a stent assembly having a band circumferentially wrapped about a stent, comprising a polymer containing a therapeutic agent, and elastically gripping the stent, as recited in independent claims 34,35,36 and 42". The examiner, respectfully, disagrees. Actually, the examiner relied upon fig. 3 of Layne which shows a series of spaced apart ePTFE circumferentially bands 52 wrapped around a stent 30. The device of Layne is a stent which is placed over the graft 20. Therefore, it is desirable to utilize the stent graft of Layne to locally deliver different drugs or agents into the vessel into which the stent graft is to be implanted to improve the vascular benefit and long term performance of the stent graft.

Art Unit: 3734

The appellant argues that the band material of Layne is inelastic and so incapable of gripping the stent. Actually, the examiner relied upon fig. 3 of Layne which shows a series of bands 52 that is capable of being easily stretched or elastically gripping the stent 30 (the term elastically can be broadly considered as the bands 52 of Layne is capable of being stretched and resuming the original shape with a small force during and after deployment).

The argument against Ragheb is one in which Ragheb has no coating that applied to a band that is wrapped around the stent. The examiner, respectfully, disagrees. Actually, the examiner relied upon col. 7, lines 15-45 of Ragheb which discloses the stent has surface coated with different polymers and therefore, it's still necessary that the coating would apply to a band.

(11) Related Proceeding Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Victor Nguyen

A handwritten signature in black ink, appearing to read "Nguyen Victor", with a stylized flourish at the end.

Art Unit: 3734

Examiner

Art Unit 3734

VN

October 11, 2007

Conferees

Michael Hayes



Supervisory Patent Examiner

Art Unit 3734

Janet Baxter



Training Quality Assurance Specialist

Technology 3700

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